

CITY OF SEADRIFT  
ORDINANCE  
FS-01

FOOD SERVICE

AN ORDINANCE REGULATING FOOD SERVICE; ESTABLISHING DEFINITIONS; ESTABLISHING BOUNDARIES TO WHICH FOOD SERVICE ESTABLISHMENTS MAY BE SET UP WITHIN THE MUNICIPALITY; PROVIDING FOR ADMINISTRATION; SEVERABILITY; ISSUANCE OF PERMITS; COLLECTION OF FEES; REPEALING EXISTING ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT; PROVIDING PENALTIES FOR VIOLATION OF THIS ORDINANCE NOT TO EXCEED THE SUM OF FIVE HUNDRED DOLLARS (\$500.00) FOR EACH OFFENSE AND ESTABLISHING AN EFFECTIVE DATE.

**WHEREAS**, the necessity of this ordinance is to protect the public safety, health and welfare of the residents and visitors of the City of Seadrift; and

**WHEREAS**, the City of Seadrift desires to provide its residents and visitors with a variety of dining options in compliance with local and state regulations & health standards; and

**WHEREAS**, the City of Seadrift recognizes that local Health Departments operate in accordance with Texas Health Codes of Texas regulating food service establishments as to food health requirements; and

**WHEREAS**, such food service establishments are also required to operate in accordance with 25 Texas Administrative Code (TAC), Chapter 228 regarding the regulation of food service establishments in the City, and

**WHEREAS**, the City Council adopts, by reference, the provisions of 25 Texas Administrative Code (TAC), Chapter 228 and any future changes that may be made to referenced TAC.

**NOW THEREFORE BE IT RESOLVED AND ORDAINED BY THE CITY COUNCIL OF THE CITY OF SEADRIFT, TEXAS:**

**SECTION 1: Applicability:**

This ordinance pertains to the regulation of all food service establishments, as defined herein, within the City of Seadrift.

**SECTION : Definitions:**

Unless specifically defined below, words or phrases used in this ordinance shall be interpreted to give them the meaning they have in common usage and to give this ordinance its most reasonable application.

**Authorized Agent/Employee** shall mean an official or employee of the Regulatory Authorities as defined herein.

**Food Service Establishment (FSE)** shall mean any Restaurant, Temporary/Seasonal Food Establishment (TFE), Mobile Food Unit (MFU), Roadside Food Vendor (RFV), Food Cart or anything in the way of providing prepared food for sale either at a permanent location or portable/mobile location.

**Health Department** shall mean the health department having jurisdiction over the area Seadrift and Calhoun County is located.

**Health and Safety Code (HSC)** shall mean any referenced Health & Safety Code.

**Licensing & Permitting** shall mean those requirements to be met for licensing & permitting of retail Food Service Establishments as required by the Regulatory Authorities.

**Mobile Food Unit (MFU)** shall mean a Food Service Establishment that is mobile and mounted on a vehicle with wheels, as in either a truck or a trailer that can be moved from place to place, either under its own power or towed or by human power.

**Permit** shall mean any or all of the following:

1. The license/permit acquired from the City authorizing the Food Service Establishment to operate within the City.
2. The license/permit acquired from the Health Department and/or TDSHS showing the Food Service Establishment has met the State Rules for operation within the State.

**Permit Fee** shall mean the fee paid or payable to the Regulatory Authorities.

**Push Cart (PC)** shall mean a Mobile Food Unit that is human powered either by pedal (like a bicycle) or pushed by hand.

**Public Property** shall mean any property owned by the City of Seadrift.

**Regulatory Authority** shall mean the State of Texas, the area Health Department and/or the City of Seadrift, Texas.

**Restaurant** shall mean a permanent, fixed structure in which a Food Service Establishment resides and operates full time, includes Temporary Food Establishment, as defined herein.

**Sales Tax Certificate** shall mean that certificate issued by the Texas Comptroller for the collection of sales taxes on sale of food and merchandise and the reporting and payment of such to the Texas Comptroller.

**State Rules** shall mean the state rules found in 25 TAC, Chapter 228, also known as Texas Food Establishment Rules.

**Temporary Food Establishment (TFE)** shall mean a permanent, fixed structure in which a Food Service Establishment resides and operates either part-time and/or seasonally.

**TAC** shall mean the Texas Administrative Code.

**TDSHS** shall mean the Texas Department of State Health Services.

**TFER** shall mean the Texas Food Establishment Rules.

### **SECTION 3: City Permits Required**

- A. A person/company may not operate a food establishment without a permit issued by the regulatory authorities.
- B. Permits are not transferrable from one person/company to another except as permitted by this ordinance.
- C. A valid permit must be posted in/on every food establishment regulated by this ordinance.
- D. Permits will be renewable on or before December 1<sup>st</sup> of each year.

### **SECTION 4: City Permits Exempted**

**This ordinance does NOT provide exemptions from any applicable State Rules that apply to Food Service.**

- A. A food establishment operated solely by a nonprofit organization is exempt from the permitting requirements of this ordinance.
- B. Food Service Establishments located on school property are exempt from the permitting requirements of this ordinance.
  1. HOWEVER, this ordinance does not provide an exemption from any applicable State Rules that may apply.

2. Any Regulatory Authority may require any information necessary to determine whether an organization is nonprofit for purposes of any exemption.
- C. Temporary food establishments brought in or sponsored or operated by civic organizations for single events are exempt from the permitting requirements of this ordinance.

#### **SECTION 4: Permit Application**

- A. Any person/company desiring to operate a food establishment must make a written application for a permit on forms provided by the Regulatory Authority. An incomplete application will not be approved. Failure to provide all the information required or falsifying information required may result in the denial or revocation of the permit. Renewals of permits are required on an annual basis on or before December 1<sup>st</sup> of each calendar year.
- B. Prior to the approval of an initial permit or the renewal of an existing permit, the regulatory authority shall inspect the proposed food establishment to determine compliance.
- C. Mobile Food Units shall be brought to City Hall for inspection and to verify that the unit is mobile and road worthy.
  1. EXCEPTION: A Mobile Food Unit that is semi-permanent on a privately-owned lot/parcel the City shall allow an onsite inspection of the unit.
    - a. Semi-permanent means is kept road ready, movable at a moment's notice, and if attached to any utilities, shall be attached via flexible hoses, not permanent piping.
- D. The following attached Exhibits reference Permit Fees, Forms and Information:
  1. Exhibit #1: Permit Fee Schedule.
  2. Exhibit #2: City Permit & Renewal Permit Application form.

#### **E. MFU's, TFE's & Restaurants – Initial Permit Required Information**

1. Completed City Permit Application, and
2. Most Recent Health Department Certificate (no more than twelve months old), and
3. Most Recent TDSHS operating license in accordance with 25 TAC, chapter 228 and Health & Safety Code Chapter 437, and
4. State Sales Tax Certificate, and
5. Accompanied by required Permit Fee, and
6. IF a MFU, and placed on private property, a copy of the signed, notarized letter allowing the MFU to park. See Section [6(b)(3)]

#### **F. MFU's, TFE's & Restaurants – Renewal Permit:**

1. Completed City Permit Renewal Application, and
2. Most recent Health Department Certificate (no more than twelve months old), and
3. Most Recent TDSHS operating license in accordance with 25 TAC, chapter 228 and Health & Safety Code Chapter 437, and
4. Current State Sales Tax Certificate, and
5. Accompanied by required Renewal Permit Fee, and
6. IF a MFU/RFV, and placed on private property, a copy of the signed, notarized letter allowing the MFU/RFV to park. See Section [6(b)(3)]

#### **SECTION 5: RESTAURANT & TEMPORARY FOOD ESTABLISHMENT LOCATIONS**

- A. It shall not be the intention of this ordinance to regulate the locations of permanent, fixed structures that will contain or may contain Restaurants or TFE's within the City.
  1. The City's Building Development Department will determine the locations and building requirements of all structures located or to be located or constructed within the City in accordance with the appropriate building codes in force at the time.
- B. It shall be the intention of this ordinance to regulate the permitting of Restaurant and TFE operations.

#### **SECTION 6: Mobile Food Unit (MFU) Locations**

- A. It shall be the intention of this ordinance to regulate the locations of MFU's and any similar type mobile food service establishments within the City.
- B. Private Property Locations:

1. MFU's may be located on private property, provided the Building Code's Setback provisions are met.
  - a. This is regulated by the City's Building Development Department and will require a Building Development Placement Permit to be obtained to place the unit.
2. If the private property is owned by the individual/company placing the MFU, the ownership must be verified by searching the CCAD deed records or providing a copy of the deed showing ownership.
3. If the private property is not owned by the individual/company placing the MFU, the property owner must provide the MFU agent/owner a signed, notarized letter stating that the MFU is authorized to utilize the property.
  - a. A copy of this letter must be included in any application for permit or permit renewal to operate the MFU.
  - b. If the property changes ownership while the MFU/RV is on the property, a new signed, notarized letter from the new owner must be completed.
  - c. Even though a property owner allows an individual MFU to be placed on their property, it is still the property owner's responsibility to ensure the property is maintained in a clean, orderly fashion including control of trash, rubbish, weeds, brush and etc. regardless.
  - d. If the property is not maintained in a clean, orderly fashion, including control of trash, rubbish, weeds, brush and etc. the MFU permit may be revoked.
  - e. MFU's shall not be parked on private property for a duration exceeding twelve hours unless the MFU operator/owner has a signed lease allowing the MFU to be placed for longer periods, or IF the property is owned by the MFU operator the unit may remain as long as it meets all permitting requirements.
  - f. MFU shall not be operated in residential areas and not in front of residential properties, except in [e(i)] above and as long as no adjacent property owner's files complaint(s).

#### C. Public Property Locations

1. MFU's may be located on public property with the following restrictions/permissions:
  - a. MFU's shall NOT park or operate:
    - Within 300 feet of the entrances to an open and operating permanent Restaurant, unless the MFU has written, notarized permission from the Restaurant.
    - That restricts a side walk, street, alley or parking area by causing people to congregate in and around the MFU.
    - Where parking is prohibited.
    - On Highway 185 between shoulder curbs.
    - In residential areas.
    - In front of residences.
    - In school zones.
    - Inside park grounds.
    - Between 5<sup>th</sup> and 7<sup>th</sup> on Bay Avenue.
    - West of 12<sup>th</sup> on Bay Avenue.
    - In Harbor areas leased to others.
    - In a way that restricts other's parking rights.
    - In a way that blocks access to other businesses.
    - In a way that interferes with normal traffic.
    - For periods of time exceeding 12 hours in one location.
      - If MFU's exceed 12 hours in one location they shall first be warned before receiving a ticket on second infraction.
      - Any tickets may be grounds for revocation of the MFU operating permit.
    - Between the hours of Midnight to 5:00am.
  - b. MFU may park and operate (without blocking/restricting traffic):
    - On West Bay Avenue between 4<sup>th</sup> to 5<sup>th</sup> and between 7<sup>th</sup> to 12<sup>th</sup> and only on the upper bluff (north of the white posts), south of the street, not within the park area.
    - In Harbor areas not leased to others:
      - This can change on a periodic basis as lessees have precedence.
    - On South Main Street north of Railroad to St. Louis:
      - Without blocking access to Museum or Mail Boxes.
    - In Sportsplex parking area without restricting other's parking rights.
  - c. IF other areas are requested that are not listed, each case will be considered individually.
    - IF approved, the permit shall be annotated with the exact location approved.
  - d. MFU's utilizing Public Property locations, including parking lots shall be limited to one additional, operating vehicle in the parking lot.

- e. Any vehicles, not in running condition or seemingly abandoned will be dealt with under the City's Parking Ordinance.

#### **SECTION 7: Miscellaneous Provisions**

MFU's Will not be permitted to sell any alcoholic drinks or beverages.

#### **SECTION 8: Administration**

1. The Administration of this ordinance shall be by any Official of the City or other designee as the City Council decrees.
2. A Notice as required in this ordinance is properly served when it is delivered to the holder of the permit or the operator of the FSE/MFU when it is sent certified return receipt requested to the last known address of the holder of the permit or the operator, with a copy maintained by the Regulatory Authority.

#### **SECTION 9: Variance and Appeal**

When the owner or person issued a citation under this ordinance can show that a provision of this ordinance would cause an unnecessary and extraordinary hardship a variance may be requested to City Council for review:

1. Any variance authorized by City Council is required to be entered in writing in the minutes of the Council Meeting and the reason which justifies authorizing the variance.
2. Any variance must be authorized by affirmative vote of not less than four (4) members of the City Council.
  - a. On appeal to the City, only the City Council, in a public session, may waive or vacate penalties assessed by the Municipal Judge under this ordinance and will require four (4) members of City Council voting to vacate.

#### **SECTION 10: Penalty**

It shall be a misdemeanor for any person to perform any act prohibited by the terms of this ordinance, or fail to do any act, which is required, and any such violation shall be punished by a fine not to exceed \$500.00. Each day or portion thereof that a violation exists shall constitute a separate offense.

#### **SECTION 11: Severability**

It is specifically declared to be the intention of the City Council of Seadrift, Texas that sections, paragraphs, sentences, clauses, and phrases of this ordinance are severable and if a phrase, clause, sentence, paragraph or section of this ordinance shall be declared unconstitutional or invalid by the valid judgment of decree of any court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs, and sections of this ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any unconstitutional or invalid phrase, clause, sentence, paragraph or sections.

#### **SECTION 12: Ordinances in Conflict**

All previous ordinances or parts of ordinances in conflict herewith are hereby repealed. Parts of ordinances not in conflict and not repealed are retained.

#### **SECTION 13: Amendments**

This ordinance and appendixes to the code may be amended, edited and/or changed at any time by action of City Council.

#### **SECTION 14: Adopted & Effective Date**

Effective date of this ordinance shall be the \_\_\_\_\_ day of \_\_\_\_\_, 2019

PASSED AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2019

Elmer DeForest  
MAYOR

ATTEST:

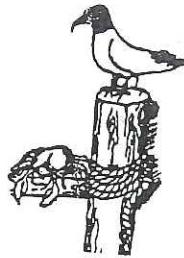
Gabriela Torres  
CITY SECRETARY



Incorporated December 27, 1912  
www.seadrifftx.org

## CITY OF SEADRIFT

Post Office Box 159  
Seadrift, Texas 77983  
Tel: (361) 785-2251  
Fax: (361) 785-2208  
Email: [seadrift@tisd.net](mailto:seadrift@tisd.net)



### FOOD SERVICE ESTABLISHMENT INTIAL AND RENEWAL PERMIT FEES

Restaurant (FSE)	\$200.00
Temporary (Seasonal) (TFE)	\$175.00
Mobile Food Unit (MFU):	
Truck/Van/Car/Trailer/etc.	\$150.00
Cart	\$ 75.00

DRAFEI

Permit Cost	\$ _____
Sales Tax Cert?	_____
(attach copy)	
Health Certificate?	_____
(attach copy)	
State Permit?	_____
(attach copy)	
Inspected?	_____
Issued date	_____
Approved by	_____

**PERMIT Number**

## CITY OF SEADRIFT

Post Office Box 159  
Seadrift, Texas 77983  
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Email: seadrift@tisd.net

**STICKER Number**

### FOOD SERVICE ESTABLISHMENTS (FSE) APPLICATION & RENEWAL PERMIT

**NOTE:** This application must be filled out completely. **INCOMPLETE APPLICATIONS WILL NOT BE ACCEPTED.** Applications for a permit to operate does not guarantee that a permit will be granted. Permit approval is based on the establishment of a FOOD SERVICE ESTABLISHMENT's compliance with current Texas and Local Health Requirements. The current Health Department Certificate & State Permit must be submitted with this application. The City can make copies as needed for the permit file. Mobile Food Units (MFU) must be inspected and a permit attached to MFU.

- Is this the Initial Permit application (not renewal)?  YES  NO  
 Is this a Renewal permit application (renewal)?  YES  NO  
 Is this application a Restaurant or Temporary (seasonal) operation?  YES  NO  
 Is this application a Mobile Food Service Unit (MFU) operation?  YES  NO

Type of vehicle for MFU?

- Truck  Van  Step Van  Trailer  Cart  Car

Other: If other describe: \_\_\_\_\_

Food Service Establishment Business Name: \_\_\_\_\_

Food Service Establishment Owner: \_\_\_\_\_

Name of FSE operator if operated by another individual: \_\_\_\_\_

Contact Phone for both: Owner \_\_\_\_\_ Operator \_\_\_\_\_

Mailing address of the Owner: \_\_\_\_\_

City \_\_\_\_\_ Street/PO Box \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Mailing address of the Operator: \_\_\_\_\_

City \_\_\_\_\_ Street/PO Box \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Sole Proprietorship?  Partnership?  Corporation?

#### Type of FSE

Unrestricted: All food prepared in FSE (includes MFU)?  YES  NO

Restricted: All food prepackaged & prepared at separate location?  YES  NO

If yes, Name/Address/Phone Number/Location where food is prepackaged? \_\_\_\_\_

All information contained in this application is true and correct to the best of my knowledge and belief. Applicant acknowledges that the permit applied for shall be subject to all provisions of the orders and ordinances of the City of Seadrift and any and all State regulations and licensing requirements, including Health Department Codes regulating food service establishments.

Signature of Applicant(s)

Signature of Applicant(s)

Date